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09/249,642	02/12/1999	QUAN A. VU	SONY-11300	1161
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HAVERSTOCK & OWENS LLP 162 N WOLFE ROAD SUNNYVALE, CA 94086			EXAMINER MISLEH, JUSTIN P	
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* QUAN A. VU  
and HISATO SHIMA

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Appeal 2008-1610  
Application 09/249,642  
Technology Center 2600

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Decided: June 26, 2008

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Before JOSEPH F. RUGGIERO, MAHSHID D. SAADAT,  
and KEVIN F. TURNER, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 2, 4-8, and 10-32, which are all of the claims pending in this application as claims 3 and 9 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

Appellants' invention relates to a method and apparatus for transmitting an isochronous video stream of data at a particular frame rate determined by the receiving device (Spec. 3-4). An understanding of the invention can be derived from a reading of independent claim 1, which is reproduced as follows:

1. A method of transmitting information from a source device at a predetermined rate, the method comprising:
  - a. calculating a ratio of first data blocks to second data blocks to achieve the predetermined rate;
  - b. forming x number of the first data blocks wherein each of the first data blocks contains n units of data;
  - c. forming y number of the second data blocks wherein each of the second data blocks contains m units of data, and further wherein m is not equal to n; and
  - d. combining x number of first data blocks and y number of second data blocks into a data stream to achieve the predetermined rate, wherein the first data blocks and the second data blocks are of a same type and have same characteristics and further wherein the x number of first data blocks are evenly distributed among the y number of second data blocks thereby forming a repeating pattern of the first data blocks and the second data blocks within the data stream.

The Examiner relies on the following prior art reference:

Staats                      US 6,373,821 B2                      Apr. 16, 2002

Claims 1, 2, 4-8, 10-20, 23-25, and 28-31 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Staats.

Claims 21, 22, 26, 27, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Staats.

Rather than repeat the arguments here, we make reference to the Brief (filed Dec. 16, 2005), the Reply Brief (filed Aug. 15, 2007), and the Answer (mailed Jun. 29, 2007) for the respective positions of Appellants and the Examiner.

We reverse.

## ISSUE

The issue is whether the Examiner erred in rejecting the claims under 35 U.S.C. §§ 102(e) and 103(a). The issue specifically turns on whether Staats anticipates Appellants' claimed invention by disclosing the step of transmitting a data stream wherein "the x number of first data blocks are evenly distributed among the y number of second data blocks thereby forming a repeating pattern of the first data blocks and the second data blocks within the data stream.

## PRINCIPLE OF LAW

In rejecting claims under 35 U.S.C. § 102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375-76, 77 (Fed. Cir. 2005), citing *Minn. Mining &*

*Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992). *Also See In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). Anticipation of a claim requires a finding that the claim at issue reads on a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

### ANALYSIS

Appellants argue that Staats does not disclose that x number of first data blocks are combined with y number of data blocks into a data stream to achieve a predetermined transmission rate (App. Br. 6). Appellants further assert that Table 1 of Staats, as relied on by the Examiner for disclosing a repeating pattern, merely indicates that a frame presentation time stamp (or SYT) value is calculated for a current frame and then used to calculate a delta value for the current frame, on a frame by frame basis (*id.*). Appellants conclude that such teachings do not amount to the claimed evenly distributing x number of first data blocks among y number of second data blocks to form a repeating pattern of the two data blocks within the data stream (*id.*).

The Examiner responds by stating that the transmission of 266 and 267 packets as disclosed by Staats are synonymous to the claimed first and second data blocks with n and m units of data (Ans. 10). The Examiner further equates data synchronization when  $M=266.973$  with the claimed “evenly distributed” first blocks among the second blocks (*id.*). Relying on Table 1 of Staats, the Examiner asserts that after calculating the first two

values, the cycle repeats every 37<sup>th</sup> packet, which provides the claimed “repeating pattern” (Ans. 11).

Upon a review of Staats, we agree with Appellants (App. Br. 7) that the data blocks of 266 packets of Staats are not shown in Table 1 to be evenly distributed among the data blocks of 267 packets. Although Table 1 shows that three frames of 266 packets are followed by a frame of 267 packets, then a frame of 266 packets, and later by a frame of 267 packets, the distribution of frames of 266 packets is not even among the frames of 267 packets. We also disagree with the Examiner that the claimed “x number of first data blocks are evenly distributed among the y number of second data blocks” reads on the synchronization requirement discussed in Staats. While synchronization requires combination of frames with 266 and 267 packets in order to achieve an average transmission rate of 266.5 (col. 9, ll. 21-24), there is no indication that the two types of frames are evenly distributed.

Therefore, as argued by Appellants (Reply Br. 5), the frame by frame calculation of Staats does not result in evenly distributed first data blocks among the second data blocks which form a repeating pattern within the data stream. In that regard, even if a pattern is created by the sequence of 266 packet and 267 packet frames of Staats and is repeated every 37<sup>th</sup> packet, the Examiner has not shown how such pattern represents an evenly distributed x number of first data blocks among the y number of second data blocks.

### CONCLUSION

On the record before us, we find that the Examiner fails to make a prima facie case that Staats anticipates claim 1 or other independent claims 6, 13, and 17 which include similar limitations. Therefore, in view of our analysis above, the 35 U.S.C. § 102 rejection of claims 1, 2, 4-8, 10-20, 23-25, and 28-31 as anticipated by Staats cannot be sustained.

Additionally, we do not sustain the 35 U.S.C. § 103 rejection of claims 21, 22, 26, 27, and 32 over Staats as the Examiner has not pointed to any modification applied to Staats that would have overcome the deficiencies discussed above.

### ORDER

The decision of the Examiner rejecting claims 1, 2, 4-8, 10-32 is reversed.

### REVERSED

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